

**United States**  
**COURT OF APPEALS**  
**for the Ninth Circuit**

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WARDE H. ERWIN and MARY LOU ERWIN,  
*Appellants,*  
vs.

RALPH C. GRANQUIST, District Director of Internal  
Revenue,  
*Appellee.*

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**APPELLANTS' BRIEF**

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*Appeal from the United States District Court for the  
District of Oregon.*

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WARDE H. ERWIN,  
*in propria personam and attorney for appellant Mary Lou  
Erwin.*



## INDEX

Page

### APPELLANT'S BRIEF

Statement of Pleadings and Facts Disclosing Basis of Jurisdiction of District Court and This Court ...	1
Facts .....	1
Statement of the Case .....	3
Specification of Errors Relied Upon .....	4
Summary of Argument .....	6
Article I and 16th Amendment .....	6
Fifth Amendment .....	7
Fourth Amendment .....	7
Argument .....	8
Direct Taxation .....	9
Due Process .....	11
Statutory Self Incrimination .....	14
Unreasonable Searches and Seizure .....	15
Conclusion .....	16
Appendix A:	
Declaration of Estimated Tax .....	19
Addition to Tax—Penalties .....	23

## AUTHORITIES

	Page
Constitution of United States .....	7
Article I, Section 9 .....	6, 9, 10, 16
Article VI .....	13, 15
Fourth Amendment .....	7, 8, 10, 16
Fifth Amendment .....	7, 9, 10, 16
Sixteenth Amendment .....	6, 7, 9

## TEXTS

Merton's Law of Federal Income Taxation, Six Rev., Vol. 1, Sec. 4.09, Ch. 4, page 10 .....	11, 13
---	--------

## STATUTES AND REGULATIONS

U. S. Code:	
Title 18, Section 1621 .....	14
Title 26, Section 11 .....	15
Title 26, Section 41 .....	10
Title 26, Section 53 .....	15
Title 26, Section 58 .....	3, 5, 6, 8, 9, 14, 16, 19
Title 26, Section 294 .....	3, 5, 9, 15, 19
Title 28, Section 1291 .....	2
Title 28, Section 1340 .....	2
Internal Revenue Code, Regulations 118, Sec. 39.41-1 .....	9

## CASES

Boyd v. United States, 116 US 616 .....	15
Eisner v. Macomber, 252 US 189 .....	10
Galavan v. Press, 347 US 522 at 530 .....	11
Irvine v. California, 347 US at 133-4 .....	11, 12
Pollack v. Farmers Loan & Trust Co., 158 US 601 .....	10
Slochower v. Board of Higher Education of NYC, 350 US 551 .....	11, 14

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**STATEMENT OF PLEADINGS AND FACTS DISCLOSING  
BASIS OF JURISDICTION OF DISTRICT COURT  
AND THIS COURT**

**FACTS**

Plaintiffs were assessed by the Commissioner of Internal Revenue penalties for

- 1) Substantially underestimating their income tax for the tax year 1952 and
- 2) Failing to file a declaration of estimated income tax for the tax year 1952 (R. 4, 5 and 6).

Plaintiffs paid the assessments and filed a claim for refund of both penalties on the ground that the statute imposing a duty to estimate future income and the amount of future tax which might be due on such estimate, and providing penalties for failure to estimate correctly were unconstitutional (R. 7 and 8).

The claim was neither allowed or denied for a period in excess of six months and this suit was instituted against the collector to whom the tax was paid (R. 8).

Jurisdiction of the District Court was invoked under Title 28 USC, Section 1340 (Congressional Act of June 25, 1948, C 646, 62 Stat. 932) (R. 7).

The court held that the statute, requiring the filing of declaration of estimated tax was constitutional and entered findings of fact, conclusions of law and judgment accordingly (R. 9, 10).

Judgment was in favor of appellants for the amount of the penalty assessed for "substantially underestimating the income tax on the year in question" (R. 10). However, the basis for that holding was that the penalty for "substantial underestimation" could not be asserted when the penalty for "failure to file" was also asserted since the two penalties were inconsistent (Finding # 3 not printed—original form).

Plaintiffs filed a notice of appeal and undertaking on appeal within the time allowed (R. 13).

Jurisdiction of this Court is based on Title 28 USC, Sec. 1291 (Congressional Act of June 25, 1948, C 646, 62 Stat. 929).

## STATEMENT OF THE CASE

The action was brought primarily to test the constitutionality of Section 58, Title 26 USC (Internal Revenue Code of 1939) which requires an estimate of future income not yet received, and requires an estimate of future tax not yet due or assessed under penalty of perjury, and Section 294, Title 26 USC (Internal Revenue Code, 1939) providing penalties for failure to estimate correctly.

The question was raised in several ways and is presented here by separate assignments of error.

1. The overruling (R. 13) of appellants' objections to Conclusion of Law 2 (R. 11) (Objection II).

Conclusion of Law # 2 reads as follows:

*"Section 58 of the Internal Revenue Code of 1939, which for the year in suit required the filing of a declaration of estimated tax by a taxpayer on or before March 15, 1952 is constitutional as a valid exercise of the taxing power accorded Congress under the Constitution."*

2. The overruling (R. 13) of plaintiffs' motion to substitute the findings of fact and conclusions of law (R. 11) reading as follows:

*"I. That plaintiffs request that a finding be made and entered herein to reflect that plaintiffs intend that penalties may not be asserted for either failure to file a declaration of estimated tax or for substantial underestimate of estimated tax."*

*"II. Plaintiffs request that a Conclusion of Law enter herein that Section 58 of the Internal Revenue Code of 1939 is unconstitutional and void."*

*"III. Plaintiffs request that a conclusion of law enter herein that neither the penalty for substan-*



*tially underestimate of estimated tax under Section 294 (d) (2) of the Internal Revenue Code of 1939 nor the penalty for failure to file an estimate under Section 294 (d) (1) (A) of the Internal Revenue Code of 1939 may be assessed and therefore neither are appropriate."*

3. The overruling (R. 13) of plaintiffs' motion to amend the Judgment Order of May 10, 1957, to read as follows (R. 12 and 13):

*"Adjudged, Ordered and Decreed, that the plaintiffs recover of the defendant the sum of \$68.40, together with interest as provided by law plus the additional sum of \$102.60 together with interest as provided by law on the ground and for the reason that Section 58 of the Internal Revenue Code of 1939 which for the year involved in this suit required the filing of a Declaration of Estimated tax by taxpayer on or before March 15, 1952, is unconstitutional and void, therefore making the assessment of any penalty for failure to file a declaration (or) for a substantial underestimate of a declaration is also unconstitutional and void."*

Plaintiffs-appellants filed their notice of appeal (R. 13 and 14) appealing from (1) the judgment and order of May 10, (2) the order denying plaintiffs' motion to amend the judgment, (3) the Order denying plaintiffs' objections to Findings of Fact and Conclusions of law, (4) and the order denying plaintiffs' motion to substitute findings and conclusions.

#### **SPECIFICATION OF ERRORS RELIED UPON**

1. Error in overruling plaintiffs' objections to conclusions of law # 2.

The conclusion was that Section 58, Title 26 USC (1939 IRC) was constitutional (R. 9). Plain-



tiffs objected (R. 11). The objection was denied (R. 13).

2. Error in overruling plaintiffs' motion to substitute findings of fact.

(Waived as unessential to a determination of the question.)

3. Error in overruling plaintiffs' motion to substitute a Conclusion of Law, II.

The requested conclusion was that Section 58, Title 26, USC (1939 IRC) was unconstitutional (R. 11). The request was denied (R. 13).

4. Error in overruling plaintiffs' motion to substitute a Conclusion of Law, III.

The requested conclusion was that neither the penalty provided by Section 294 (d) (2), Title 26 USC (1939 IRC) nor the penalty provided by Section 294 (d) (1) (A), Title 26 USC (1939 IRC) may be assessed and are not appropriate (R. 11 and 12).

The request was denied (R. 13).

5. Error in overruling plaintiffs' motion to amend the judgment.

The amendment requested (R. 12-13) was to the effect that the judgment should find that Section 58, Title 26 USC (1939 IRC) and the penalty provisions based thereon ["failure to file" an estimate, Section 294 (d) (1) (A) Title 26, and Section 294 (d) (2), Title 26 USC (1939 IRC)] to be unconstitutional and void and to provide for a judgment in favor of plaintiffs in the amount of the two penalties (\$171.00).

The motion was denied (R. 13).

Each of the foregoing specifications was intended to present one basic question, and error is claimed as to each specification in that the court failed to find that Section 58, Title 26 USC (1939 IRC), and the penalty provisions, Section 294 (d) (1) (A) and (d) (2), Title 26 USC (1939 IRC) to be unconstitutional.

In the interest of brevity the constitutional questions will be argued without specific reference to each specification.

### **SUMMARY OF ARGUMENT**

#### **Article I and the 16th Amendment**

Article I, Section 9, paragraph 4 of the Constitution of the United States provides:

*"No capitalization or other direct tax shall be had, unless in proportion to the census or enumeration hereinbefore directed to be taken."*

The Sixteenth Amendment to the Constitution of the United States removed the constitutional requirement of "apportionment" as applied to a tax on "income."

The Sixteenth amendment gives Congress the power to determine what shall be "income" and that they have determined this to be the amount earned in any 12-month period less allowable deductions.

Section 58, Title 26 USC (1939 IRC) taxes something besides income because it requires a payment of a tax on income in advance of the time the income comes into existence.

Since Section 58 is not a tax on income but is a tax based on what the taxpayer's guess as to what his income will be, it does not come under the 16th Amendment and must be capitalization tax or a direct tax. If Section 58 is a tax measure, the tax is not apportioned as required by Article I, Section 9 of the Constitution and is void.

### **Fifth Amendment**

The Fifth Amendment to the Constitution of the United States provides that no person shall . . . be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law. . . .

No "due" process or "any process" of law is provided by a statute which attempts to require a person to "guess" what his income is going to be in advance of receiving it and to "guess" what the tax on the "guessed income" will be.

A statute which further requires that the "guess" be made under *penalty of perjury* and which further provides that the "guesser" will be assessed a penalty if he guesses wrong or fails to guess at all based upon what his income turns out to be 12 months later, is in violation of the "self incrimination clause" of the Fifth Amendment and the unreasonable search and seizure provisions of the Fourth Amendment. This will be referred to in this brief as "statutory self incrimination."

### **Fourth Amendment**

The Fourth Amendment provides that the right of the people to be secure in their own person . . . and effects

against unreasonable searches and seizures shall not be violated.

The result of Section 58 is to render "insecure" the "person" and "effects" of a citizen. The self-imposed "search" is "unreasonable" in that Congress recovers the tax on the "guessed income" after it becomes due in any event.

### ARGUMENT

§ 58 Declaration of Estimated Tax by individuals:

*"(a) Requirements of Declaration—every individual . . . should at the time prescribed in subsection (d) make a declaration of his estimated tax for the taxable year if.*

*"(1) his gross income from wages (as defined in Section 1621) can reasonably be expected to exceed the sum of \$4500.00 plus \$600.00 with respect to each exemption provided in Section 25 (b); or*

*"(2) his gross income from sources other than wages (as defined in Section 1621) can reasonably be expected to exceed \$100.00 for the taxable year and his gross income to be \$600.00 or more.*

*"(b) Contents of Declaration. In the declaration required under subsection (a), the individual shall state—*

*"(1) The amount which he estimates as the amount of tax under this chapter for the taxable year . . .*

*"The Declaration shall also contain such other information for the purpose of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall contain or be verified by a written statement that it is made under the penalties of perjury."*

The constitutional provisions under which the court is requested to examine Sections 58 and 294, Title 26, USC (1939 IRC) (in full appendix A) are these:

U. S. Constitution:

1. Article I, Section 9, paragraph 4.
2. Sixteenth Amendment.
3. Fifth Amendment.
4. Fourth Amendment.

### **Direct Taxation**

Article I, Section 9, paragraph 4 provides:—

*“No capitalization, or other direct tax shall be had, unless in proportion to the Census or Enumeration hereinbefore directed to be taken.”*

A tax on individual incomes is a direct tax and must be apportioned except that the 16th Amendment removed the requirement of apportionment as follows:

*“Income Tax. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.”*

Does Section 58 levy a tax on income?

Section 58 is not a tax on income because no income is in existence. The statutes' words are “estimated tax” and “on or before March 15 of the taxable year” and “can be expected,” all of which relate to any event to occur in the future.

“Income” requires “time” for its measurement.

Regulations 118, Sec. 39.41-1, provides in part:

*"Net income must be computed with respect to a fixed period. Usually that period is 12 months and is known as the taxable year. . . ."*

Title 26, Sec. 41 USC (1939 IRC), 53 Stat. 24 as amended provides in part:

*"The net income shall be computed upon the basis of the taxpayer's annual accounting period. . . ."*

Does Section 58 levy a tax on "estimated income"?

If it is a "tax" measured by future income, it would be (if otherwise constitutional) a direct or capitalization tax and would be in violation of Article I, Section 9, paragraph 4 of the Constitution. *Pollack v. Farmers Loan & Trust Co.*, 158 US 601.

The income tax amendment to the Federal Constitution should not be extended by loose construction so as to repeal or modify except as applied to "income" those provisions of the Constitution that require an apportionment according to proportion for direct taxes upon property, real and personal. *Eisner v. Macomber*, 252 US 189.

A tax on income can not be levied merely because a citizen is alive and might have taxable income.

### **Due Process and Self Incrimination**

The Fifth Amendment to the Constitution of the United States provides (as it applies to this case):

*"No person shall . . . be compelled in any criminal case to be a witness against himself nor be deprived of . . . property without due process of law. . . ."*



### "Due Process"

*"Although a statute may impose a tax which is on income within the meaning of 16th Amendment, it must meet the challenge of other provisions of the Constitution. The due process of law clause in the Fifth Amendment has been said to be not a limitation upon the taxing power of Congress except in rare and special instances It serves as a check upon a threatened legislation exceeding that power."*

*Mertens' Law of Federal Income Taxation, Sixth Revision, Volume 1, Sec. 4.09, Chapter 4, page 10.*

*"Due Process bars Congress from enactments that shock the sense of fair play which is the essence of due process." Galavan v. Press, 347 US 522 at 530, but see Irvine v. California, 347 US at 133-4.*

*"The protection of the individual from arbitrary action is the very essence of due process of law." Slochower v. Board of Higher Education of NYC, 350 US 551.*

*"Indeed one of the prime requisites of any state is 'certainty' and legislative enactment may be declared by the courts to be inoperative and void for uncertainty in the meaning thereof." 50 Am. Jur. 484.*

At a very minimum, "due process" requires a "reasonable certainty."

Failure of the courts to require reasonable legislative certainty and failure to provide judicial constancy results in an unstable government, unstable legislative acts and unstable executive decisions. (See discussion of "Adhocness" *Irvine v. California*, 347 US at 147.

No legislation has ever before been attempted in the United States by which the citizen is required to look



into the future and determine what will occur in the weeks or months to come and be required to reduce his occult observations to writing "under penalty of perjury."

If these statutes are held to be constitutional, what then would be the pattern of future legislation?

If the statutes are held constitutional, with the confidence of the public in the courts to which constitutional determinations are entrusted be strengthened by the knowledge that the courts of this land sanction and will judicially approve the legislative matters by which the state of a person's mind can be determined by the Collector of Internal Revenue and penalized if that state of mind was incorrect in the judgment of a person who is not even possessed of the facts except after the "future predictions" have become "past experiences"? What then is the constitutional limitation of such power? Would a statute be constitutional which permitted the Commissioner to make the "guess" instead of the taxpayer?

Justice Frankfurter at the conclusion of his dissenting opinion in *Irvine v. California* (supra) states:

*"Our people may tolerate many mistakes of both intent and performance, but with unerring instinct they know that when any person is intentionally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature (unlawful search) if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism."*

*"The duty of the courts is limited to interpretation. They can not legislate. The remedy for an un-*

*lawful or ineffective law is corrective legislation. Judicial legislation by statutory construction, although it has been operative in some instances is nevertheless discouraged . . . Where a statute is unambiguous, the courts can not seek elsewhere for legislative intent. Even where doubt exists, a statute is not to be extended by implication or enlarged by construction so as to embrace matters not specifically covered therein."*

*Merten's Law of Federal Taxation, Sixth Revision, Volume 1, Section 3.03.*

Plaintiffs wonder if our economic system has become so socialistic that it is possible to forecast with "reasonable certainty" the amounts of income a man will earn in the next 12 months? Only such a judicial concept would permit upholding the constitutionality of the Section 58.

Article VI of the Constitution provides:

*"This constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land and the Judges in every state shall be bound thereby . . . and all judicial officers both of the United States and the several states shall be bound by oath or affirmation to support this constitution."*

The decision made here will undoubtedly be determinative of the future course of much legislation. If Section 58 is held to be constitutional by this court, then the constitutional limitations on separation of powers will be emasculated and Congress will have received a constitutional "rubber stamp" from the court to pass whatever legislation is desired and the Bill of Rights may be invoked only by judicial whim.

We find no certainty here. This is the arbitrary or capricious action condemned by the Constitution and by the Supreme Court in *Slochower v. Board of Higher Education*, 350 US 55.

No process or hearing is provided to determine whether an estimate should be made and if, under Section 294 (quoted in the appendix in full) after the income is determined on March 15 of the year following, it turns out you have failed to guess (Section 294 (d) (2), 53 Stat. 88 as amended in full appendix A) within 20% of what the tax turns out to be, the Commissioner is required to assess a penalty and may prosecute for perjury.

### **Statutory Self Incrimination**

Title 26, Section 58 (a) USC (1939 IRC) provides that the estimate or guess as to future income shall be made under penalty of perjury.

Title 18, Section 1621, 62 Stat. 773, provides punishment for perjury as follows:

*"Whoever . . . subscribes any material matter which he does not believe to be true is guilty of perjury and shall . . . be fined not more than \$2000. or imprisoned not more than five years or both."*

Title 26, Section 294 (d) (1) (A), 53 Stat. 88 in full (in Appendix A) as amended, provides that there shall (except for "reasonable cause" and not willful neglect) be added to the tax 5% of each installment of estimated tax, plus 1% of the unpaid amount for each month during which the installment remains unpaid but not to exceed 10% of each installment.

Taxpayers contend that they were within their constitutional rights and amply justified in failing to attempt to guess what their future income was going to be when they might be faced with a perjury prosecution if the Collector felt that the guess wasn't accurate enough to suit him, and if income as finally determined turned out to be substantially in excess of any estimate which might have been made.

A prosecution would, of necessity, be based solely on the taxpayers' own "estimate."

The result is immediately apparent:

"Statutory Self Incrimination."

### **Unreasonable Searches and Seizure**

The Fourth Amendment to the Constitution of the United States provides in part:

*"The right of the people to be secure in their own person, houses, papers and effects against unreasonable searches and seizures shall not be violated."*

Where a person is required to make a written declaration of what he believes a future event will turn out to be under penalty of perjury, the act requiring it is an "unreasonable search and seizure" resulting in an insecurity in "person" and "effects." Such a statutory search is "unreasonable" in that it doesn't add any income to the government since the actual income which is to be guessed is actually taxed after it comes into existence. Title 26, Section 11 USC, 53 Stat. 5, as amended, et seq., and Title 26, Section 53 USC, 53 Stat. 28 as amended. See *Boyd v. United States*, 116 US 616.

## CONCLUSION

Taxpayer contends that Congress has no power to require a return of income until the income comes into existence.

The cause should be reversed (with instructions to enter a conclusion of law that Title 26, Section 58 USC, Internal Revenue Code 1939, Chapter 120, Section 5 (a); 57 Stat. 141 as amended, 58 Stat. 242; 59 Stat. 559; 62 Stat. 113; 64 Stat. 544; 64 Stat. 945, was unconstitutional and that Title 26, Section 294 USC, Internal Revenue Code 1939, 53 Stat. 88 as amended, 57 Stat. 144; 58 Stat. 37; 58 Stat. 235; 59 Stat. 523; 64 Stat. 545; 64 Stat. 1136; 65 Stat. 465, are unconstitutional and void as violative of the due process and self incrimination provisions of the Fourth and Fifth Amendments to the Constitution of the United States and that Section 58 insofar as it may be an attempted tax on income is unconstitutional and void in that it is not apportioned as required by Article I, Section 9 of the Constitution of the United States and with instructions to enter judgment in favor of plaintiffs for the full sum of \$171.00 with interest from the date of payment.

*"The ultimate power to preserve the Constitution in its integrity is conferred by it (the Constitution) on the Courts whose duty it is to prevent its dismemberment by illegitimate and unconstitutional practices which usually gain a foothold by insidious and apparently harmless approaches to meet imagined emergencies or supposed calamities."*

The quotation above is adopted by way of conclusion.

Both Congress, the Bench and the Bar, and the people are entitled to know whether these provisions receive the constitutional approbation of the judiciary.

Certainly, these are amazing pieces of Legislation!

Respectfully submitted,

WARDE H. ERWIN, *in propria personam*.







**APPENDIX A****26 U. S. C. A. Sec. 58****Declaration of estimated tax by individuals**

(a) *Requirement of declaration.* Every individual [other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621 (a), withholding under Subchapter D of Chapter 9 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year] shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year, if—

(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of \$4,500 plus \$600 with respect to each exemption provided in section 25(b); or

(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed \$100 for the taxable year and his gross income to be \$600 or more.

(b) *Contents of declaration.* In the declaration required under subsection (a) the individual shall state—

(1) the amount which he estimates as the amount of tax under this chapter for the taxable year, without regard to any credits under sections 32 and 35 for taxes withheld at source and without regard to the tax imposed by subchapter E on self-employment income;

(2) the amount which he estimates as the credits for the taxable year under sections 32 and 35; and

(3) the excess of the amount estimated under paragraph (1) over the amount estimated under paragraph (2), which excess for the purposes of this chapter shall be considered the estimated tax for the taxable year.

The declaration shall also contain such other information for the purposes of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall contain or be verified by a written statement that it is made under the penalties of perjury.

(c) *Joint declaration by husband and wife.* In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or wife is a nonresident alien. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(d) *Time and place for filing.*

(1) *In general.* The declaration required under subsection (a) shall be filed on or before March 15 of the taxable year, except that if the requirements of section 58(a) are first met

(A) after March 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(B) after June 1 and before September 2 of the tax-

able year, the declaration shall be filed on or before September 15 of the taxable year, or

(C) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) *Amendment of declaration.* An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioner with the approval of the Secretary. If so made, such amendments may be filed on or before the fifteenth day of the last month of any quarter of the taxable year subsequent to that in which the declaration was filed and in which no previous amendment has been filed, except that in the case of an amendment filed after September 15 of the taxable year, it may be filed on or before January 15 of the succeeding taxable year. Declarations and amendments thereof shall be filed with the collector specified in section 53(b) (1).

(3) *Return as declaration or amendment.* If on or before January 15 of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Commissioner with the approval of the Secretary—

(A) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this chapter, be considered as such declaration; and

(B) If the tax shown on the return (reduced by the credits under sections 32 and 35) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall, for the purposes of this chapter, be considered as the amendment of the declaration permitted by paragraph (2) to be filed on or before such January 15.

(e) *Extension of time.* The Commissioner may grant a reasonable extension of the time for filing declarations and paying the estimated tax, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(f) *Persons under disability.* If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(g) *Signature presumed correct.* The fact that an individual's name is signed to a filed declaration shall be prima facie evidence for all purposes that the declaration was actually signed by him.

(h) *Publicity of declaration.* For the purposes of section 55 (relating to publicity of returns), a declaration of estimated tax shall be held and considered a return under this chapter. June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(a), 57 Stat. 141, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Part I § 13(a), 58 Stat. 242; Nov. 8, 1945, 5:17 p. m., p. m., E. S. T., c. 453; Title I, §

102(b) (4), 59 Stat. 559; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(a), 62 Stat. 113; Aug. 28, 1950, c. 809, Title II, § 208(d) (4), 64 Stat. 544; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(g), 64 Stat. 945.

## **26 U. S. C. A. Sec. 294**

### **Additions to the tax in case of nonpayment.**

#### *(a) Tax shown on return.*

(1) *General rule.* Where the amount determined by the taxpayer as the tax imposed by this chapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) *If extension granted.* Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 295, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(3-5) Omitted. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §118(a), 58 Stat. 37.



(b) *Deficiency*. Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272(i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) *Filing of jeopardy bond*. If a bond is filed, as provided in section 273, the provisions of subsection (b) of this section shall not apply to the amount covered by the bond.

(d) *Estimated tax*.

(1) *Failure to file declaration or pay installment of estimated tax*.

(A) *Failure to file declaration*. In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to wilful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each installment due but unpaid, 1 per centum of the unpaid amount

thereof for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

(B) *Failure to pay installments of estimated tax declared.* Where a declaration of estimated tax has been made and filed within the time prescribed, or where a declaration of estimated tax has been made and filed after the time prescribed and the Commissioner has found that failure to make and file such declaration within the time prescribed was due to reasonable cause and not to willful neglect, in the case of a failure to pay an installment of the estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of the unpaid amount of such installment, and in addition 1 per centum of such unpaid amount for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment.



(2) *Substantial underestimate of estimated tax.* If 80 per centum of the tax (determined without regard to the credits under sections 32 and 35), in the case of individuals other than farmers exercising an election under section 60 (a), or  $66\frac{2}{3}$  per centum of such tax so determined in the case of such farmers, exceeds the estimated tax (increased by such credits), there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This paragraph shall not apply to the taxable year in which falls the death of the taxpayer, nor, under regulations prescribed by the Commissioner with the approval of the Secretary, shall it apply to the taxable year in which the taxpayer makes a timely payment of estimated tax within or before each quarter (excluding, in case the taxable year begins in 1943, any quarter beginning prior to July 1, 1943) of such year [or in the case of farmers exercising an election under section 60 (a), within the last quarter] in an amount of at least as great as though computed (under such regulations) on the basis of the taxpayer's status with respect to the personal exemption and credit for dependents on the date of the filing of the declaration for such taxable year (or in the case of any such farmer, or in case the fifteenth day of the third month of the taxable year occurs after July 1, on July 1 of the taxable year) but otherwise on the basis of the facts shown on his return for the preceding taxable year. In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if

the taxpayer failed to meet the 80 per centum and 66-2/3 per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950. In the case of taxable years beginning prior to November 1, 1951, and ending after October 31, 1951, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the requirements of this paragraph by reason of the increase in rates of tax on individuals imposed by the Revenue Act of 1951.

(3) *Tax on self-employment income.* This subsection shall be applied without regard to the tax imposed by subchapter E, relating to tax on self-employment income.

(e) *Substantial Overstatement of Expected Carry-Backs.* If the time for payment of any tax or taxes for any taxable year is extended under section 3779, there shall be added to such tax or taxes an amount equal to 5 per centum of the penalty portion, if any, of the amount to which such extension relates, unless the taxpayer establishes to the satisfaction of the Commissioner that, as of the end of the taxable year in which such extension was made, there was reasonable cause to expect there would be no such penalty portion. The penalty portion shall be the excess of the amount to which such extension relates which is not paid by the end of the taxable year in which such extension is made over 125 per centum of the amount to which such extension relates which is satisfied by applying thereto a decrease in tax in respect of an application under section 3780(a)

less any amounts assessed in respect of such application which are not so satisfied. 53 Stat. 88, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(b), 57 Stat. 144; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 118(a), 58 Stat. 37; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, §§ 6(b), (8), 13(b), 58 Stat. 235, 244; July 31, 1945, c. 340, § 4(b), 59 Stat. 523; Aug. 28, 1950, c. 809, Title II, § 208(d) (8), 64 Stat. 545; Jan. 2, 1951, c. 1195, § 2, 64 Stat. 1136; Oct. 20, 1951, 2:07 p. m., E. S. T., Title I, § 103(b), 65 Stat. 465.